

STATEMENT OF REP. JOHN CONYERS, JR.  
Courts, the Internet, and Intellectual Property Subcommittee  
Hearing on "Copyright Piracy Prevention and the Broadcast Flag"  
2237 RHOB, 10 AM, Thursday, March 6, 2003

Copyright piracy is one of the most serious economic problems facing this committee. As the whole world knows by now, we have absolutely rampant piracy over the Internet. Last year, consumers swapped over 5 billion music files over peer-to-peer networks; an astonishing 58 percent of the American population between the ages of 12-21 has downloaded MP3's over the Internet in the past two years. Consumers have grown accustomed to free music on the Web; and movies and video games are a close second.

This is why we are at a crossroads in the media business. The decisions made in Congress, the state legislatures, and the courts will impact the future of the content industry, and whether we will even have a viable content industry in the future. We cannot continue to let the content industry and its employees operate in an environment where consumers feel entitled to content for free.

There have been two basic sides on this problem. The content industry was discouraged from putting its music and movies out in digital form unless the computers, television, and handheld electronics used to access them would obey digital rights management (DRM), the electronic tools used to stop piracy. The high-tech companies wanted the marketplace to be the judge; they wanted consumers to have access to content and electronics without restrictions.

Fortunately, there is a middle ground that is working. The parties will negotiate and the government will step in to either (1) get the negotiations moving if they stall or (2) implement a resulting agreement. This approach has seen its first success, the technical standard for a broadcast flag. The flag is the digital watermark that would be put on over-the-air digital television broadcasts to indicate the presence of DRM. The parties reached an agreement on a technical standard so that the content industry will make flags and the high-tech industry will make devices that work with each other. Now, the FCC is in a rule-making to implement that agreement.

I support this approach because it offers the best of both worlds: letting the market work while ensuring that the government can assert its prerogative to set policy. But we cannot stop now because there are at least three outstanding issues.

First, the FCC's broadcast flag rule must follow both the letter and the spirit of the agreement; it should not be filled with loopholes that make flags useless and allow piracy. Content companies will not be able to transition to digital unless they can be assured that they will not have to compete with Internet sites that offer copyrighted content for free. Second, the flag is just one step in addressing piracy. The parties must negotiate in good faith and reach agreement on the next issue, the analog hole or reconversion issue. This refers to closing the loophole that would be created if a digital broadcast with a watermark is converted to analog, thereby erasing the watermark, and then back to digital so it can be pirated. Finally, the parties must work toward solving the peer-to-peer piracy problem, which this Subcommittee considered at a hearing last week.

I can only hope that there will be fruitful discussions on these issues; otherwise, we will reconvene this Subcommittee and solve the problems with legislation.